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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/675,790	09/29/2000	Donald F. Ferguson	P24324 USA	8873

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EXAMINER
JACOBS, LASHONDA T

ART UNIT	PAPER NUMBER
2157	

DATE MAILED: 08/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>03 May 2004</u>.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-14 and 18-20</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-14 and 18-20</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This Office Action is in response to Applicants' Amendment and Request for Reconsideration

filed on May 3, 2004. Claims 1-14 and 17-20 are presented for further examination.

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed
> in the United States before the invention by the applicant for patent or (2) a patent granted on an application for
> patent by another filed in the United States before the invention by the applicant for patent, except that an
> international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this
> subsection of an application filed in the United States only if the international application designated the United
> States and was published under Article 21(2) of such treaty in the English language.

2.   Claims **1-8, 13-14** and **17** are rejected under 35 U.S.C. 102(e) as being anticipated by

D'Souza et al (hereinafter, "D'Souza", 6,453,468).

As per claim **1**, D'Souza discloses a method for upgrading at least one of a plurality of

computer programs stored on an application server in a distributed computing environment, said

method comprising:

- preventing said application server from servicing requests for an upgrade-ready

  computer program while permitting said application server to service client requests for

  other computer programs (col. 3, lines 28-38, col. 4, lines 62-67, col. 5, lines 1-21 and

  col. 14, lines 9-41).

As per claim **2**, D'Souza further discloses:

(a) preventing said application server from receiving any new requests for said computer

program (col. 3, lines 28-38, col. 4, lines 62-67, col. 5, lines 1-21 and col. 14, lines 9-41);

(b) waiting until all of said application server's current requests for said computer have

ended (col. 3, lines 28-38 and col. 14, lines 9-41);

(c) acknowledging completion of upgrading said computer program (col. 3, lines 28-38 and

col. 14, lines 9-41); and

(d) permitting said application server to receive any new requests for said computer

program (col. 3, lines 28-38 and col. 14, lines 9-41).

As per claim 3, D'Souza discloses:

(e) sending a signal to a router to instruct said router to stop routing requests for said

computer program to said application server (col. 3, lines 28-38 and col. 14, lines 9-41).

As per claim 5, D'Souza discloses:

- a universal resource locator (col. 9, lines 66-67 and col. 10, lines 1-5).

As per claim 6, D'Souza discloses:

- a filename (col. 9, lines 66-67 and col. 10, lines 1-5).

As per claim 7, D'Souza discloses wherein step (d) comprises the step of:

(f) sending a signal to a router to instruct said router to begin routing requests for said

computer program to said application server (col. 3, lines 28-38 and col. 14, lines 9-41).

As per claims 4 and 8, D'Souza discloses:

- an identification code identifying said computer program (col. 7, lines 20-27 and col.

  14, lines 9-25).

As per claim 13, D'Souza further discloses the step of:

(k) repeating steps (a) through (d) for a next application server storing said computer

program (col. 3, lines 28-38, col. 4, lines 62-67, col. 5, lines 1-21 and col. 14, lines 9-41).

As per claim **14**, D'Souza discloses wherein step (c) comprises the step of:

(l) receiving a signal from an application server upon completion of upgrading of said

computer program at said application server (col. 3, lines 28-38 and col. 14, lines 9-41).

As per claim **17**, D'Souza discloses a method for upgrading one of a plurality of computer

programs stored on an application server in a distributed computing environment, said method

comprising the steps of:

(a) instructing a router to stop routing requests for said computer program to said

application server (col. 3, lines 28-38 and col. 14, lines 9-41);

(b) waiting until said application server is no longer supporting a current client request for

said computer program (col. 3, lines 28-38 and col. 14, lines 9-41);

(c) after completion of upgrading of said computer program, instructing said router to begin

routing requests for said computer program to said application server (col. 3, lines 28-38

and col. 14, lines 9-41).

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

4.   Claims **9-12** and **18-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over

D'Souza in view of Applicants Admitted Prior Art (AAPA).

As per claim **9**, D'Souza discloses the invention substantially as claimed.

However, D'Souza does not explicitly disclose wherein step (e) comprises the step of:

(g) maintaining a server list, said server list identifying a computer program and an

application server for satisfying a request for said computer program.

AAPA discloses:

(g) maintaining a server list, said server list identifying a computer program and an

application server for satisfying a request for said computer program (pg. 2, lines 18-22, pg.

3, lines 1-16 and pg. 4, lines 1-8).

Given the teaching of AAPA, it would have been obvious to one of ordinary skill in art to

implement or incorporate maintaining a list of sessions for a server in D'Souza's system to

identify the number of active sessions that a server is currently supporting in order to balance the

load evenly among the servers.

As per claim **10**, D'Souza discloses the invention substantially as claimed.

However, D'Souza does not explicitly disclose wherein said signal in step (f) comprises:

• an identification code read from said server list.

AAPA discloses:

• an identification code read from said server list (pg. 2, lines 18-22, pg. 3, lines 1-16 and

pg. 4, lines 1-8).

Given the teaching of AAPA, it would have been obvious to one of ordinary skill in art to

implement or incorporate maintaining a list of sessions for a server in D'Souza's system to

identify the number of active sessions that a server is currently supporting in order to balance the load evenly among the servers.

As per claim **11**, D'Souza discloses the invention substantially as claimed.

However, D'Souza does not explicitly discloses the step of:

(i) maintaining a session list of active client requests serviced by said application server, said session list identifying a client request and computer program requested by said client.

AAPA discloses:

(i) maintaining a session list of active client requests serviced by said application server, said session list identifying a client request and computer program requested by said client.

(pg. 2, lines 18-22, pg. 3, lines 1-16 and pg. 4, lines 1-8).

Given the teaching of AAPA, it would have been obvious to one of ordinary skill in art to implement or incorporate maintaining a list of sessions for a server in D'Souza's system in order to identify the requests being serviced by a server in a timely and efficient manner.

As per claim **12**, D'Souza discloses the invention substantially as claimed.

However, D'Souza does not explicitly disclose wherein step (b) comprises the step of:

(j) referencing said session list.

AAPA discloses:

(j) referencing said session list (pg. 2, lines 18-22, pg. 3, lines 1-16 and pg. 4, lines 1-8).

Given the teaching of AAPA, it would have been obvious to one of ordinary skill in art to implement or incorporate maintaining a list of sessions for a server in D'Souza's system in order to identify the requests being serviced by a server in a timely and efficient manner.

As per claims **18** and **20**, D'Souza discloses wherein step (a) comprises:

- sending a signal to said router identifying said computer program and said application

  server (col. 3, lines 28-38 and col. 14, lines 9-41).

However, D'Souza does not explicitly disclose wherein said signal includes:

- information retrieved from a server list and identifying said computer program.

AAPA discloses:

- information retrieved from a server list and identifying said computer program (pg. 2,

  lines 18-22, pg. 3, lines 1-16 and pg. 4, lines 1-8).

Given the teaching of AAPA, it would have been obvious to one of ordinary skill in art to

implement or incorporate maintaining a list of sessions for a server in D'Souza's system to

identify the number of active sessions that a server is currently supporting in order to balance the

load evenly among the servers.

As per claim **19**, D'Souza discloses the invention substantially as claimed.

However, Chao does not explicitly disclose wherein step (b) comprises:

- receiving a signal from said application server, said application server maintaining a list

  of active client requests, said list identifying said computer program, said application

  server sending said signal when said list reflects no active client requests for said

  computer program.

AAPA discloses:

- receiving a signal from said application server, said application server maintaining a list

  of active client requests, said list identifying said computer program, said application

  server sending said signal when said list reflects no active client requests for said

  computer program (pg. 2, lines 18-22, pg. 3, lines 1-16 and pg. 4, lines 1-8).

Given the teaching of AAPA, it would have been obvious to one of ordinary skill in art to implement or incorporate maintaining a list of sessions for a server in D'Souza's system to identify the number of active sessions that a server is currently supporting in order to balance the load evenly among the servers.

Response to Arguments

5.   Applicant's arguments with respect to claims 1-14 and 17-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 6,070,012 to Eitner et al

U.S. Pat. No. 6,006,034 to Heath et al

U.S. Pat. No. 6,687,745 to Franco et al

U.S. Pat. No. 6,161,125 to Traversat et al

U.S. Pub. No. 2003/0041094 to Lara et al

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaShonda T. Jacobs whose telephone number is 703-305-7494. The examiner can normally be reached on 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Ario Etienne can be reached on 703-308-7562. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is 703-305-3900.

LaShonda T. Jacobs
Examiner
Art Unit 2157

ltj
July 21, 2004

SALEH NAJJAR
PRIMARY EXAMINER